Supreme Court, U.S.
FILED
JUN 18 1997
OFFICE OF THE CLERK

No. 96-1210

IN THE

Supreme Court of the United States

OCTOBER TERM, 1996

UNITED STUDENT AID FUNDS, INC.,
Petitioner,

v.

APRIL BRANNAN,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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SUPPLEMENTAL BRIEF OF THE PETITIONER

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Pursuant to S. Ct. R. 15.8, petitioner United Student Aid Funds, Inc. files this Supplemental Brief to apprise the Court of a recent decision that was not available at the time petitioner filed either its Opening Brief or its Reply Brief.

In *Sibley v. Diversified Collection Services, Inc. et al.*, Civ. No. 3:96-CV-0816-D (N.D. Tex. June 10, 1997), the district court relied on the Ninth Circuit's decision in *Brannan* to conclude that petitioner is subject to the federal Fair Debt Collection Practices Act ("FDCPA").[1] Op. at 16.

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[1] Ten copies of the *Sibley* opinion have been lodged with the Office of the Clerk.

The district court also considered — and rejected — the position of the United States Department of Education that the FDCPA does not apply to non-profit student loan guaranty agencies like petitioner, concluding simply that the Department's interpretation "is without persuasive support." *Id.* at 18. The district court similarly rejected the position of the Federal Trade Commission that the FDCPA does not apply to nonprofit student loan guaranty agencies like petitioner. *Id.* at 18 & n.13.

Sibley illustrates, and indeed highlights, the urgent need for review of the Ninth Circuit's decision in this case. The Ninth Circuit's far-reaching holding will not be confined to that Circuit; will not be confined to cases in the same procedural posture; and will perpetuate the adverse consequences of the irreconciliably conflicting obligations imposed by the Higher Education Act and the FDCPA.[2]

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[2] *Sibley* also cited the *Brannan* dissent, which is relied upon by the petitioner in *Brannan v. United Student Aid Funds, Inc.*, No. 96-7746, *petition for cert. filed* (U.S. Jan. 29, 1997). *See* Op. at 23. The *Sibley* court denied motions to dismiss state law claims on the basis of preemption "without prejudice to [the defendants] later demonstrating that specific claims directly conflict with the collection requirements imposed by federal law." *Id.*

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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